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EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

FACEBOOK, INC., Plaintiff, v. CONNECTU LLC, CAMERON WINKLEVOSS, TYLER WINKLEVOSS, HOWARD WINKLEVOSS, DIVYA NARENDRA, AND DOES 1-25, Defendants.	CASE NO. 105 CV 047381 **DEFENDANTS' OPPOSITION TO PLAINTIFF FACEBOOK, INC.'S MOTION TO COMPEL SUPPLEMENTAL RESPONSES AND PRODUCTION OF DOCUMENTS IN RESPONSE TO ITS FIRST SETS OF SPECIAL INTERROGATORIES AND REQUESTS FOR PRODUCTION; AND DEFENDANTS' REQUEST FOR SANCTIONS** Date: February 17, 2006 Time: 8:30 a.m. Dept. 7 Judge: Socrates Peter Manoukian

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I. INTRODUCTION

Despite this Court's earlier Order that substantially limits discovery at this stage of the case, Plaintiff propounded discovery, and now moves for an order compelling additional responses to many questions not "directly related" to the issue of personal jurisdiction. Further, Plaintiff attempts to revive matters that were resolved through amended responses, after the parties concluded their pre-motion conference. In many instances, Plaintiff puts Defendants through the task of responding to issues that were fully resolved in Defendants' amended responses. Indeed, it appears as though Plaintiff failed to read them, even though they were attached to Plaintiff's motion. In other instances, Plaintiff seeks an order that would effectively require Defendants to answer the same questions it recently asked and got answers to at the recent depositions. And, in still other instances, Plaintiff seeks an order compelling Defendants to produce documents and highly confidential information generated by third parties who have no involvement in the acts Plaintiff has accused Defendants of committing.

As the Court will undoubtedly conclude, the vast majority of the interrogatories and requests at issue are confusing, compound, complex, and conjunctive. While Defendants have tried to respond as best they could, even though each interrogatory and request was propounded to each defendant in a shotgun fashion, the Court could simply deny Plaintiff's motion because of the way these items were written. Whatever approach this Court takes, Defendants respectfully urge this Court to deny Plaintiff's motion and sanction Plaintiff for overreaching.

II. FACTS

During their junior year at Harvard University in Massachusetts, Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra[1] conceived the idea of connecting people through networks of friends and common interests at universities and colleges throughout the country, beginning with Harvard University. They worked together to create a website embodying this idea, originally to be called Harvard Connection and renamed ConnectU when it launched. Unbeknownst to them, however, one of their partners, Mark Zuckerberg, who had assumed the responsibility of completing the software code to run the Harvard Connection website, decided to steal the idea. After agreeing to complete the Harvard Connection code, Mr. Zuckerberg created his own website using the stolen ideas, calling it TheFacebook, which later incorporated as Plaintiff herein. Over one year ago, ConnectU filed a Massachusetts district court action against TheFacebook, Inc. (now known as Facebook, Inc.) and its individual creators for stealing the Harvard Connection idea.

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[1] Cameron Winklevoss, Tyler Winklevoss and Divya Narendra, along with ConnectU have been named as defendants in this action. The remaining defendant, Howard Winklevoss, is Cameron and Tyler's father who is a 1% owner of ConnectU.

A few months ago, Facebook filed this retaliatory California state action. Defendant ConnectU has demurred in this action, which will likely be dismissed because it alleges facts that are not actionable. Facebook alleges that Defendants misappropriated information from its website. This so-called misappropriated information takes the form of email addresses that Plaintiff's users posted on its website. More specifically, Plaintiff claims, as its own confidential information, email addresses that its users voluntarily post on their individual profiles on the www.facebook.com website and expect to share – and do in fact share – with other users. Indeed, anyone who accessed the Facebook website (which is essentially a blueprint of the idea conceived by the Winklevoss brothers and Narendra), could easily see and download any other user's email address and the addresses of such user's friends. Nevertheless, Facebook contends that ConnectU and the Individual Defendants violated an anti-hacking statute, Penal Code § 502, by entering the Facebook website and downloading these email addresses.

Before a defendant can be held to answer in a foreign jurisdiction, he or she must have sufficient "minimum contacts" with a forum such that he or she "should reasonably anticipate being haled into court there". *Vons Cos., Inc. v. Seabest Foods, Inc.,* 14 Cal.4th 434, 444-448, 464 (1996). Here, the individual defendants are residents of east-coast states. They have had few contacts with California. Hence, they have filed motions to quash service. These motions place the burden on Plaintiff to establish that Defendants have the required "minimum contacts." As a result of Defendants' pending motions to quash, and Plaintiff's unbounded efforts to take discovery, this Court held a hearing on January 6, 2006. At this hearing, Plaintiff argued it should be entitled to take full-blown discovery. In support of its argument, Plaintiff propounded a Notice of Deposition, directed to ConnectU LLC, that identified fourteen (14) topics into which Plaintiff sought to inquire. (Mosko Decl. Exh. A) ConnectU filed an opposition in which it argued that most if not all these proposed topics were irrelevant to whether this Court could exercise jurisdiction over the individual defendants. (Mosko Decl. Exh. B)

This Court agreed with ConnectU, placing substantial limits on the inquiries Plaintiff could make. Specifically, this Court held that the only matters into which Plaintiff could inquire were those "directly related to the issues of the individual Defendants' personal jurisdiction." (Mosko Decl. Exh. C) In fact, this Court Ordered that if Plaintiff attempted to inquire into matters that were not "directly related," this Court would issue "substantial monetary sanctions." (*Id.*) Despite this Court's Order, by this motion Plaintiff continues its efforts to take full-blown discovery.

On January 16, 2006, Plaintiff took the limited depositions of each Defendant. As indicated in Defendants' pending motion for sanctions, attached as Exhibit D to Scott R. Mosko's declaration, Plaintiff asked approximately 3 hours of questions not "directly related" to jurisdiction issues. In addition to Plaintiff's attempt to seek written discovery in contradiction to this Court's Order, Plaintiff also seeks an order to compel Defendants to answer many of the same questions that they previously answered in these depositions. Moreover, Plaintiff also seeks an order compelling Defendants to answer interrogatories (e.g. calling for Defendants to describe their California contacts and communications) even though Defendants delivered each document in their possession regarding such communications. In short, Plaintiff raises a slew of futile arguments making this motion mostly an expensive yet vain exercise. For the reasons set forth herein, Plaintiff's motion should be denied. Defendants' opposition below addresses the issues as Plaintiff grouped them in its actual motion.

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III. ARGUMENT

A. DISCOVERY CONCERNING THE "WINKLEVOSS COMPANIES" SHOULD BE DENIED

In its argument beginning on page 7 of its motion, Plaintiff contends that *each* of the Defendants must respond to discovery requests seeking information regarding third parties. As detailed below, these requests are meritless because:

(a) each individual defendant has already responded that he has no such information or records;

(b) Plaintiff has no basis to seek such records from Cameron Winklevoss, Tyler Winklevoss, or Divya Narendra these Defendants have no relationship whatsoever with these third party companies (Lockwood Decl. ¶ 6; Mosko Decl. ¶ 4);

(c) this discovery is a fishing expedition seeking highly confidential third-party information, none of which is relevant to the only issue this Court has allowed for discovery, *i.e.* whether personal jurisdiction can be asserted against the individual defendants;

(d) Plaintiff has failed to meet its burden that Howard Winklevoss has possession, custody, or control of the requested documents or information. Only a properly issued subpoena directed to these companies could result in the production of such information; and

(e) the scope of this discovery is substantially overbroad.

The third parties identified in Plaintiff's discovery requests (collectively referred to as the "WINKLEVOSS COMPANIES"), are defined in the Interrogatory and Requests for Production definition section as:

> . . . without limitation, Winklevoss Technologies, LLC; Winklevoss Consultants, Inc., The Winklevoss Group; AND Winklevoss, LLC, their past AND present parents, subsidiaries, affiliates, predecessors, divisions, officers, directors, trustees, employees, staff members, agents, counsel representatives, consultants, AND ALL PERSONS acting OR purporting to act on their behalf". (*See e.g.,* Nagel Decl.. Exh. 3, pp. 3-4, lines 25 - 28; 1)

The discovery at issue here is Interrogatory Nos. 1, 3-6, 9, 14-16, 18 and 19, and Request for Production Nos. 1, 5-9, 11-13, 16 and 19-22.

1. Explanation of Third Party Winklevoss Companies

Winklevoss Technologies, LLC, Winklevoss Consultants, Inc., and The Winklevoss Group are separate entities having nothing to do with ConnectU or its website, www.connectu.com. Winklevoss Technologies, LLC licenses pension valuations and related software to companies and actuarial firms. Winklevoss LLC administers and markets corporate-owned life insurance and philanthropic products. Winklevoss Consultants, Inc. is a holding company created to support the business operations of Winklevoss Technologies, LLC and Winklevoss LLC. The Winklevoss Group has been dissolved. None of the entities Plaintiff refers to as WINKLEVOSS COMPANIES has a monetary, advisory, influential, or other interest in ConnectU. (*See* Declaration of Mark Lockwood)

2. Information Regarding The WINKLEVOSS COMPANIES Is Wholly Irrelevant to Jurisdiction

This Court has already ordered that the only information subject to discovery at this stage is that which is directly relevant to whether the individual defendants are subject to personal jurisdiction. (Mosko Decl. Exh. C) The information sought regarding these third party entities cannot possibly fall within this narrow category. The WINKLEVOSS COMPANIES are not parties to this action. These intrusive demands (see below) constitute a fishing expedition seeking the WINKLEVOSS COMPANIES' most confidential information and trade secrets. Plaintiff seems to argue that because one of the WINKLEVOSS COMPANIES has the same corporate address as ConnectU, or that because one of ConnectU's members (Howard Winklevoss) may have an interest in one or more of these third-party companies, Plaintiff has free range to inquire about the WINKLEVOSS COMPANIES' activities. Plaintiff fails to cite any authority for such a proposition because it is contrary to law.

The only information relevant to personal jurisdiction is the *individual defendants'* contacts and activities with California. (*Vons Cos., Inc. v. Seabest Foods, Inc.,* 14 Cal.4th 434, 444-

448 (1996)) In their discovery responses, the individual defendants have included all such contacts, *whether they concerned ConnectU or not*. For example, in the supplemental responses to the interrogatories in question (Nagel Decl. Exh. 24), to which Plaintiff gives only passing mention in its motion, Howard Winklevoss identifies his few contacts with California, the majority of which actually concern his responsibilities with one of the WINKLEVOSS COMPANIES. Plaintiff now seeks every detail of these entities through this discovery. Astoundingly, Plaintiff seeks this information from *each* of the defendants, without having any basis to believe any of them is in possession, custody, or control of this information. (*See* Mosko Decl. ¶ 4)

Indeed, even Plaintiff itself has acknowledged that such information is irrelevant by its inquiries at the January 16th deposition of Howard Winklevoss (also limited by this Court to questions directly related to personal jurisdiction). Surprisingly, despite the supplemental responses in which Mr. Winklevoss specifies his California contacts (including those involving one of the entities called "WINKLEVOSS COMPANIES") Plaintiff chose not to ask Howard Winklevoss any questions regarding these contacts. (Mosko Decl. ¶ 7) Instead, Plaintiff pursued a line of questioning that was, for the most part unrelated to jurisdiction issues. (*See* ConnectU's pending motion for sanctions. (Mosko Decl. Exh. D))

Plaintiff's apparent premise is that the activities of a properly organized company are deemed to be the acts of someone Plaintiff believes to be related to this company. More specifically, Plaintiff posits that Howard Winklevoss has some relationship with the WINKLEVOSS COMPANIES, and therefore, Plaintiff argues it should be entitled to discover highly confidential information about these companies. Of course Plaintiff does not cite any case for this absurd and overreaching proposition.

Moreover, even if such highly confidential information were "directly relevant" to personal jurisdiction, which it is not, Plaintiff fails to establish the foundations necessary to allow this Court to order its production from any of these defendants. Initially, Plaintiff makes no showing that Defendants Cameron Winklevoss, Tyler Winklevoss, or Divya Narendra have anything to do with these entities. In fact, they do not. (Lockwood Decl. ¶ 6) Yet, Plaintiff moves to compel them to produce this information even though Plaintiff was told during the pre-motion conference that neither Cameron Winklevoss, Tyler Winklevoss nor Divya Narendra had any involvement with the WINKLEVOSS COMPANIES. (Mosko Decl. ¶ 4). Such an approach should not be tolerated.

Further even as it concerns Howard Winklevoss, this motion to compel is just as defective. To justify such an order, assuming the requested information were relevant, Plaintiff must show that Howard Winklevoss is in possession, custody, or control of it. (Cal. Civ. Proc. Code § 2031.010) Without any citation, Plaintiff asserts Howard Winklevoss is the Chairman of the Board and *former* CEO of Winklevoss Consultants, and a "staff member of Winklevoss Technologies." (Moving papers, at p. 8, lines 5-6). Even if this information were verified with competent evidence, it nonetheless fails to establish that Howard Winklevoss has possession, custody, or control of this information. Because it is Plaintiff's burden to establish this foundational matter, for this reason alone, this part of the motion must be denied. *See Wharton v. Lybrand, Ross Bros. & Montgomery,* 41 F.R.D. 177, 180 (E.D.N.Y. 1966) (Parenthetically, proving that Plaintiff's purpose in seeking this information is unrelated to personal jurisdiction, Plaintiff had every opportunity to ask Howard Winklevoss about his relationship with the WINKLEVOSS COMPANIES, or whether he had possession, custody, or control of its documents during the January 16 depositions. Plaintiff chose not to ask any such questions. (Mosko Decl. ¶ 7)

Further, even if Plaintiff could establish the necessary foundation between the requested documents and Howard Winklevoss, Plaintiff is still not entitled to it. In its motion, Plaintiff gives passing reference to alter ego (moving papers at p. 8), as the apparent basis to justify production. Plaintiff misapplies the theory when it apparently contends that the requested document will provide evidence that it believes will lead to the conclusion that one or more of the WINKLEVOSS COMPANIES is the alter ego of ConnectU. Plaintiff is wholly mistaken about this contention. Even if it were true, however, it would still not be relevant to whether the Court has personal jurisdiction over Howard Winklevoss, or any of the individual defendants. The only way a third party's contacts with a forum would be relevant to whether a court in that forum has jurisdiction over its officer or director is if that individual is the alter ego *of the third party*. Said differently, unless and until Plaintiff can establish Howard Winklevoss (or any of the individual defendants) is the alter ego of any of the WINKLEVOSS COMPANIES, the activities of these companies are irrelevant to whether the court has personal jurisdiction over the individual defendants. *See e.g. Automotriz Del Golfo De California v. Resnick,* 47 Cal.2d 792, 796 (1957). There is no evidence of alter ego between and of the defendants and the WINKLEVOSS COMPANIES.

Again during its depositions of the individual defendants, Plaintiff decided not to ask questions about alter ego theory, *e.g.* whether there is a unity of interest, ownership, and control between the entities involved. Plaintiff asked no questions regarding how the WINKLEVOSS COMPANIES were organized; where their charters were filed, whether they conduct meetings, whether corporate formalities are followed, and most importantly Howard Winklevoss's relationship with them. (Mosko Decl. ¶ 7) Absent any such proof whatsoever, Plaintiff's detailed inquiries in this motion regarding the WINKLEVOSS COMPANIES' activities are completely irrelevant to whether this Court has jurisdiction over the individual defendants.

3. The Scope of the Discovery is Overwhelming, Substantially Overbroad and Burdensome

The only information relevant to whether this Court can exercise personal jurisdiction over the individual defendants is *their* specific contacts and activity as they impact California. *Vons Cos., Inc.*, 14 Cal.4th at 444-448. Yet Plaintiff seeks an order compelling each defendant to respond to what is essentially third party discovery. Plaintiff's discovery seeks details regarding the WINKLEVOSS COMPANIES' contacts with California (Interrogatory No 1, RFP Nos. 1, 9); accounts receivable information for the WINKLEVOSS COMPANIES (Interrogatory No. 3); WINKLEVOSS COMPANIES' visits to California (Interrogatory No. 4); WINKLEVOSS COMPANIES' property (Interrogatory No. 5, RFP No. 12); WINKLEVOSS COMPANIES' contracts (Interrogatory No. 6, RFP Nos. 1, 13); WINKLEVOSS COMPANIES' licenses (Interrogatory No. 9, RFP No. 16) the identification of WINKLEVOSS COMPANIES' directors, officers employees and agents (Interrogatory No. 14, RFP Nos. 6, 19); the identification of the

WINKLEVOSS COMPANIES' promotional, advertising and marketing activities (Interrogatory No. 15, RFP No. 20); the identification of WINKLEVOSS COMPANIES' business relationships (Interrogatory No. 16, RFP Nos. 5, 21) WINKLEVOSS COMPANIES' investments (Interrogatory No. 18); the location of WINKLEVOSS COMPANIES' offices, facilities and equipment (Interrogatory No. 19), and the organizational structure of the WINKLEVOSS COMPANIES (RFP Nos. 6, 7).

Perhaps the most intrusive discovery that Plaintiff propounded are Plaintiff's requests for the WINKLEVOSS COMPANIES' financial reports, profit and loss statements, accounts payable, accounts receivable, and loan documents (RFP Nos. 8, 11, 22). Trade secret information regarding these third party companies cannot and should not be disclosed, particularly pursuant to this fishing expedition seeking irrelevant information.

4. Information Concerning Third Party Companies Must Be Subpoenaed

Above, Defendants proved that information regarding WINKLEVOSS COMPANIES cannot be relevant to whether this Court has jurisdiction over the individual defendants. In fact, even if it were relevant, Plaintiff has pursued the wrong source for this information. Relevant information from third parties must be subpoenaed. There is no competent evidence suggesting any of the defendants has possession, custody, or control over the mounds of information sought, as required by Cal. Civ. Proc. Code § 2031.010. Plaintiff took nearly 14 hours of depositions and never inquired about the individual defendants' relationship with these third parties. Plaintiff's back-door efforts to secure this information therefore must be rejected.

5. Plaintiff's Motion as it Concerns the Above-Cited Requests is Harassment in that Most of the Answers Provide Responding Party Has No Such Information

Rather than propound discovery requests in a logical fashion, Plaintiff propounded the same discovery to each individual defendant and defendant ConnectU. There is no evidence that three out of four of the individual defendants have any connection whatsoever to the WINKLEVOSS COMPANIES. In fact, as the Lockwood declaration so states, there is no connection. (Lockwood Decl. ¶ 5) Nevertheless, Plaintiff forged ahead, propounding discovery concerning the

WINKLEVOSS COMPANIES to each individual defendant. Making matters worse, despite their individual responses that responding party has no such information, (*see e.g.* the Response to Interrogatory No. 3 by Cameron Winklevoss [Nagel Decl. Exh. 10 at pp. 4-5)], Tyler Winklevoss [Nagel Decl. Exh. 11 at pp. 4-5] and Divya Narendra [Nagel Decl. Exh. 12 at pp. 4-5]), Plaintiff moves for an order compelling further responses against these individuals. See Moving Papers, at p 7, line 4: "Each Defendant should be compelled to provide information and documents related to Winklevoss Companies." Plaintiff was told in no uncertain terms these defendants had no connection to the WINKLEVOSS COMPANIES. (Mosko Decl. ¶ 4) Indeed, they do not. (Lockwood Decl. ¶ 6) Such harassment in having to respond to this motion in light of the facts and in light of these individual defendants' complete responses should be sanctioned.

B. DEFENDANTS FULLY RESPONDED TO EACH DISCOVERY REQUEST SEEKING THE IDENTITY OF CALIFORNIA PERSONS OR ENTITIES HE OR IT CONTACTED

Plaintiff contends Defendants failed to respond fully to discovery directed to their contacts with California entities or persons. In a confusing and awkward argument beginning at page 9 of its moving papers, Plaintiff cites portions of certain interrogatories and portions of some of the defendants' responses to argue they should be compelled to provide more information. Plaintiff cites the following discovery in this section: Interrogatory Nos. 1, 2, 3, 8, 15 and 16; RFP Nos. 1, 2, 4, 9-11, 15, 20 and 21.

Defendants, however, fully responded to all discovery calling for the identification of California businesses or persons with whom they had contact. Again, a simple review of the supplemental responses, served after the parties had their pre-motion conference on this discovery, shows each contact. Surprisingly, although Plaintiff attaches these responses to its motion (*see* Nagel declaration, Exhibits 23 - 27), it apparently failed to read them. For example, regarding his California contacts, Howard Winklevoss's amended response to Interrogatory No. 1 provides in relevant part,

> Responding Party has a mother and three sisters who live in California. To the best of his recollection, together Responding Party has communicated by telephone with these relatives approximately six (6) times a year. Responding Party has spoken by telephone to Steve Kirkbaumer several times over the past five (5) years. Responding

> Party has spoken by telephone with Mohan Phansalkar one or twice over the past five (5) years. Responding Party has spoken with James McQueen by telephone several times during the past one or two years. Responding Party has communicated with Doug Thiemann several times during the past one or two years. Responding Party recalls a vacation to California for a short time in 2002.

Nagel Decl. Exh. 24.

Cameron Winklevoss's amended response to Interrogatory No. 1 provides in part:

> Responding Party recalls a vacation to California for a short time in 2002. In addition, Responding Party has had communications with Apple, Google, Paypal, Yahoo, Webex, Friendster and Napster. Responding Party understands ConnectU is in possession of some of emails regarding such communication.

Nagel Decl. Exh. 25.

Tyler Winklevoss's amended response to Interrogatory No. 1 provides in part:

> Responding Party assisted in an internship program during the summer of 2002. Limited communication in California with persons involved in this California program occurred. Responding Party recalls no further communications with or to a California resident of entity.

Nagel Decl. Exh. 26.

Divya Narendra's amended response to Interrogatory No. 1 provides in part:

> Responding party assisted in an internship program during the summer of 2002. Limited communications in California with persons involved in this California program occurred. Responding Party recalls no further communications with or to a California resident or entity.

Nagel Decl. Exh. 27.

ConnectU's amended response to Interrogatory No. 1 provides in part:

> If any of the individual Defendants, acting on behalf of ConnectU in circumstances that resulted in communications with persons or entities known to reside in California, they would have done so through email. Because the response to this interrogatory can be derived from a review of these electronic communications, after a suitable protective order is entered, ConnectU will produce all such electronic communications that were received from or sent by any of the individual Defendants to or from any individual residing in California or any entity located in California.

Nagel Decl, Exh. 23.

Further, significantly before the January 16, 2006 depositions of the defendants, ConnectU served copies of these very communications referenced in its amended answer to

Interrogatory No. 10. (Mosko Decl. ¶ 6) The documents served included each email referenced in Cameron Winklevoss's amended response to Interrogatory No. 1. Specifically, these documents include communications to and from Google, Apple, Webex, etc. Again, amazingly, Plaintiff chose not to ask a single question about these communications. (Mosko Decl. ¶ 7) Perhaps most egregiously, as it concerns this motion, Plaintiff dares to argue that Defendants failed to respond or produce such documents concerning their contacts with California. This is harassment as it concerns these defendants and a misrepresentation to this Court, deserving of sanctions, as requested below.

In this motion, Plaintiff also specifically references its interrogatory (Number 15) regarding advertising, promotion, or marketing activities in California. (*See* Moving papers, at p. 10, lines 5-8). Defendants' responses to Interrogatory No. 1 concerning communications with California fully respond to discovery directed to advertising, promotion, or marketing activities in California because the latter activities are a subset of all California communications. Defendants answers to Interrogatory No. 15 are quite consistent with their answers to Interrogatory No. 1. After objections, Howard Winklevoss states, he "possess no such information . . . [and] took no action advertising, promoting and/or marketing for ConnectU." (Nagel Decl. Exh. 9 at p. 8). Cameron Winklevoss, Tyler Winklevoss and Divya Narendra state they had no such contacts in their personal capacity, and then referred to ConnectU's response as such activities might have been initiated by ConnectU. (Nagel Exhs. 10, 11 and 12, at pp. 7 - 8). ConnectU's response to this Interrogatory, after objection, provides,

> To the extent ConnectU has not already produced documents regarding its advertising, promotional and marketing activities [directly at California residents], all such non-privileged documents will be produced. (Nagel Decl. Exh 8, p. 7)

Moreover, as stated before, significantly prior to the January 16 depositions, all such documents in ConnectU's possession were produced. (Mosko Decl ¶ 6). So, again it appears that Plaintiff has put Defendants through the effort of responding to a discovery motion without reading Defendants' responses or reviewing the documents produced. Defendants are entitled to reimbursement from Plaintiff for the time they spent responding to this baseless motion.

Plaintiff engages in a theoretical exercise regarding Defendants' objections. Plaintiff apparently seeks a ruling from this Court on each of these objections, which explains in part why Plaintiff's separate statement comprises more than 100 pages. Not only has Plaintiff failed to read Defendants' responses or review the documents Defendants produced, it ignored what was said during pre-motion conferences. As Defendants told Plaintiff regarding each of the discovery requests seeking email communications between them and any California resident or entity, they performed a diligent search and would be producing such communications in spite of their objections. (Mosko Decl. ¶ 6). And, significantly before the January 16 depositions, Defendants hand delivered each of these communications to Plaintiff. (*Id.*)

Defendants respectfully suggest the Court strike Plaintiff's arguments regarding defendants' objections, as moot. However, in the event this Court wishes to analyze these objections, Defendants respond as follows. Plaintiff cites the objection regarding the undue burden of determining whether a particular communication involved a California entity. (*See* Moving papers at p. 10). First, as discussed earlier, significantly before Plaintiff filed this action in California, ConnectU sued FaceBook and others in the Massachusetts district court for stealing the ideas incorporated into Plaintiff's website at www.facebook.com. During the course of the Massachusetts litigation, ConnectU collected each document it possessed, which exceeds many tens of thousands. In response to Plaintiff's discovery in this case, ConnectU has searched each of its documents and has produced those specifically referencing a communication with a California entity or individual. (Mosko Decl. ¶ 7) Plaintiff's confusing objection seems to say that ConnectU should be put to the task of researching its communications that do not specifically reference California. Plaintiff here flippantly suggests that ConnectU can access some website and confirm whether other documents it served in the Massachusetts case that do not have a reference to California indeed involved a California entity or individual. Again, Plaintiff makes this bold claim without citing any law to support it. Indeed such suggestion is directly contrary to law. *See Holguin v. Superior Court,* 22 Cal.App.3d 812, 821 (1972).

In short, ConnectU performed a reasonable search to locate all emails, including those involving promotional or marketing activities, that went to or came from California. These emails were produced. Hence, there is nothing to compel in light of the supplemental responses, identified above.

C. DEFENDANTS' REFERENCE TO AND ACTUAL PRODUCTION OF DOCUMENTS THAT FULLY RESPOND TO INTERROGATORIES WAS APPROPRIATE

Without bothering to read the amended responses to the Interrogatories or review the documents Defendants produced, Plaintiff apparently seeks an order requiring Defendants to identify specifically the documents responsive to several of its interrogatories. Motion at p. 11. Plaintiff cites the following discovery in this section: Interrogatory Nos. 1, 8, 11, 13, 14, 15, 18, and 19. In fact, these amended responses, served after the pre-motion conference, specifically identify the writings about which the interrogatories inquire. Moreover, Plaintiff fails to mention that these writings were specifically produced significantly before the January 16 depositions. (Mosko Decl. ¶ 6) Plaintiff's decision not to ask about these writings during the depositions (*Id.* at ¶ 7) proves its goal is simply to harass and delay. Defendants request sanctions for having to respond to this motion.

1. Interrogatory Nos. 1, 8, 15 and 19 Seek Evidence of Communications with California Entities or Individuals to Which Defendants Have Fully Responded

Interrogatory No. 1 seeks communications between ConnectU and any California individual or entity. In its amended response to this interrogatory ConnectU stated in part:

> . . . if any of the individual Defendants, acted on behalf of ConnectU in circumstances that resulted in communications with persons or entities known to reside in California, they would have done so through email. Because the response to this interrogatory can be derived from a review of these electronic communications, after a suitable protective order is entered, ConnectU will produce all such electronic communications that were received from or sent by any of the individual Defendants to or from any individual residing in California or any entity located in California.

(Nagel Decl. Exh. 23)

Interrogatory No. 8 seek emails directed to California residents soliciting them join www.connectu.com. In their responses Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra refer Plaintiff to ConnectU's response to this Interrogatory. In ConnectU's amended response, which Plaintiff attaches to its motion but failed to read, it states in part:

> . . . ConnectU will perform a reasonable search of its records and if there are records showing that Cameron Winklevoss, Tyler Winklevoss, Divya Narendra, or Howard Winklevoss personally solicited members or registrants of FaceBook to become members or registrants of ConnectU, those specific Communications will be produced upon the entry of a suitable protective order. (Nagel Decl. Exh. 23)

Interrogatory No. 15 seeks evidence of advertising, promotional, and marketing activities directed to California. Similar to its response to Interrogatory No. 1, Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra refer Plaintiff to ConnectU's response to this Interrogatory. In ConnectU's amended response, which Plaintiff attaches to its motion but failed to read, it states in part:

> . . ConnectU is unaware of any instances in which Tyler Winklevoss, Divya Narendra, or Howard Winklevoss participated in any 'advertising, promotions or marketing activity directed to California residents'; ConnectU is aware of limited activities by Cameron Winklevoss, on ConnectU's behalf, involving communications with entities believed to be located in California that might have lead [sic] to such activities. These communications take the form or emails. Any such communications will be produced upon the entry of a suitable protective order.

(Nagle Decl. Exh. 23)

Plaintiff cites Code of Civil Procedure § 2030.230 as the basis for its argument that additional responses are necessary. Section 2030.230 provides that in order to refer to a document in an interrogatory answer, the reference "shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents which the answer may be ascertained. . ." Not only did the amended responses provide the detail, *ConnectU separately produced these documents so there would be no questions which documents were referenced.* (Mosko Decl. ¶ 6)

The only reason Plaintiff put Defendants to the task of responding to this baseless argument is that Plaintiff failed to read the amended responses and/or review the documents produced. Plaintiff's utter failure to discuss the significance of these amended responses, which were prepared after the parties' pre-motion conference, confirms Defendants' suspicions. (Mosko Decl. ¶¶ 4, 9) Defendants request an order compelling Plaintiff to compensate them for the time necessary to respond to this argument.

Perhaps the best proof of Plaintiff's bad faith in bringing this motion comes from a review of Interrogatory No. 19, one of the specific interrogatories for which Plaintiff seeks an order to compel a further answer in its brief at page 11. Interrogatory No. 19 reads: "Identify the location of ConnectU's and Winklevoss Companies' offices, facilities server/equipment locations." Defendants have already addressed the issue of the Winklevoss Companies , *infra,* and will not repeat that argument here. Regarding ConnectU, however, ConnectU's amended response to Interrogatory No. 19, attached as Exhibit 23 to Robert Nagel's declaration states, ". . . ConnectU operates in Connecticut. Its website server is located in Washington state." This response could not be more complete. Substantial sanctions should issue against Plaintiff for having to quote its amended responses to Plaintiff as proof that it answered Plaintiff's Interrogatories.

2. Full Responses from Inquiries Regarding the Formation and Maintenance of ConnectU Have Already Been Made

Regarding Interrogatory Nos. 13 and 14, Plaintiff seeks background information concerning ConnectU's formation. First, each of ConnectU's formation documents has been produced. *See, infra.* Most recently ConnectU referred to many of these documents and attached them to its pending motion before Judge Elfving. Moreover, Plaintiff knows exactly where many of these documents are, as it refers to the actual operating agreement in Interrogatory No. 13, which reads:

> "IDENTIFY the circumstances surrounding the formation AND maintenance of CONNECTU as a limited liability company, including without limitation, filing, investments, COMMUNICATIONS, PERSONS involved, capitalization, directors, officers, attorneys, investors, AND a reasons for the formation, as well as organizational meetings, including without limitation meetings of directors, officers, board member, AND Members, managers AND Board of Managers,

> as defined in the Limited Liability Company Operating Agreement of ConnectU, LLC - bates numbers C011285 through 011335."

Second, as a review of Interrogatory No. 13, for example, shows, this interrogatory is profoundly overbroad and conjunctive. During the pre-motion conference, Defendants told Plaintiff that there has been no change in ConnectU's membership or management since its inception. (Mosko Decl ¶ 4) What is most frustrating about these questions is that since this pre-motion conference, Plaintiff had the opportunity to take ConnectU's deposition on its noticed topic, No. 13, that reads:

> ConnectU's past and present directors, officers, agents, principles, managers, employees, and/or similar individuals (including Cameron Winklevoss, Tyler Winklevoss, Howard Winklevoss, and Divya Narendra) and their respective duties, authorities, job descriptions, and responsibilities. (Mosko Decl. Exh. A)

So, Plaintiff had a full and complete opportunity to inquire about ConnectU's formation. Instead, Plaintiff chose to ask only limited questions about how ConnectU was formed, or other subparts to Interrogatory No. 13. At ConnectU's corporate deposition in the Massachusetts case, ConnectU responded to several questions that are subparts to Interrogatory No. 13. *See e.g.* the discussion regarding the individual defendants' investments into ConnectU, at page 29 of this deposition, that Plaintiff attaches to the Nagel declaration, as Exhibit 31.

Indeed, regarding Interrogatory No. 14, which calls for Defendants to discuss their responsibilities with ConnectU, Plaintiff did inquire during ConnectU's deposition about this very topic. (*See* Mosko Decl. Exh E) Yet, despite this testimony, Plaintiff seeks an order compelling it to respond in writing to the same questions. Cal. Civ. Proc. Code § 2019.030(a)(1) provides the Court with the discretion to limit discovery, particularly when it is "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." The Court may also decide which method of discovery is appropriate, particularly where one is unduly burdensome and expensive. (Cal. Civ. Proc. Code § 2019.030(a)(2)). Here Plaintiff seeks an order compelling defendants to outline their duties at ConnectU, when they have already deposed them, and have already gotten their response to this question. Respectfully, Plaintiff's request on this issue should be denied.

In short, Defendants' objections that this discovery is substantially overbroad and that the interrogatories in question are conjunctive, should be sustained. In addition, and in any event, Interrogatory Nos. 13 and 14 are clearly within the deposition topics into which this Court allowed inquiry. Thus, to the extent these topics are not objectionable, they are superfluous to Deposition topic 11. Plaintiff does not have the right to keep asking questions that defendants have already answered, particularly with the apparent purpose to harass these Defendants.

3. Interrogatory No. 11, Seeking the Identification of the Services Rendered by www.connectu.com, Is Irrelevant to Personal Jurisdiction

As this Court has already ordered, the only information Plaintiff may seek concerns that which is "directly relevant" to whether there is personal jurisdiction over the individual defendants. (Mosko Decl. Exh. C) In striking 11 out of 14 requested topics for deposition of ConnectU, this Court clearly indicated it would not tolerate a fishing expedition into irrelevant areas.

Interrogatory 11 states, "Identify the services provided through the connectu.com website to users, including without limitation, how the services are provided." First, if Plaintiff needs to know this information, it can access the website itself. Second, as the objections set forth, how ConnectU operates cannot be even marginally related to whether this Court has personal jurisdiction over the individual Defendants. ConnectU has not challenged this Court's jurisdiction over it. Hence, this question seeks irrelevant information. Defendants' objection should be sustained.

D. PLAINTIFF ALLEGEDLY FAILS TO UNDERSTAND DEFENDANTS' RESPONSES REGARDING "PERSONAL CAPACITY"

As stated above, Plaintiff essentially propounded each interrogatory and request to each Defendant. This shotgun effect made preparing responses highly cumbersome. Plaintiff implies that Defendants withheld information in its "personal capacity" section of its brief, beginning at page 12. (Plaintiff specifically identifies Interrogatory Nos. 7, 8 and 15; RFP Nos. 1-4, 6, 7, 9-11, 14, 15 17-19, and 23.) However, the shotgun approach to this discovery necessitated that Defendants' response be organized. Consequently, the individual Defendants provided detailed responses to this discovery regarding actions taken in their personal capacity. Regarding their capacity as members of ConnectU, the individual Defendants referred Plaintiff to ConnectU's responses. So, a reading of the individual defendants' responses in conjunction with ConnectU's response provides complete information regarding the activities that are the subject of the inquiry.

For example, Interrogatory No. 7 states,

> IDENTIFY occurrences when YOU AND/OR ANY PERSON on YOUR behalf, including without limitation, PACIFIC NORTHWEST SOFTWARE, accessed the website, ww.facebook.com, AND the purposes of each access, including without limitation, ANY COMMUNICATIONS that RELATE TO ANY of the occurrences AND FACEBOOK user OR registrant accounts OR email addresses used to access the facebook.com website.

Individual defendants Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra responded that they did not access facebook.com in their personal capacity:

> . . . Responding party did not access www.facebook.com in his personal capacity. To the extent there are records reflecting such access by Responding party in his capacity with ConnectU L.L.C., Responding party is informed and believes that subject to objections, ConnectU's responses to either Plaintiff's first set of interrogatories, or First Request for Production of Documents may identify any such access.

ConnectU's response to Interrogatory No. 7 provides,

> . . . To the extent there are records reflecting such access by Responding party, and such documents have not already been produced, all such non-privileged documents will be produced.

(Comparable responses were given to each of the discovery requests identified in this section). The reason the individual Defendants referenced ConnectU's response was that ConnectU has all the ConnectU-related files each defendant generated. The individual defendants no longer have such files. Therefore, the individual defendants fully responded to such questions. Indeed, ConnectU's document production included each email representing a communication between any of the individual defendants and a California individual or entity. (Mosko Decl. ¶ 6) Neither ConnectU nor the individual defendants withheld any such email, whether it was written or received in their capacity as members of ConnectU or not. Hence there is nothing to compel here because the responses and the production were not incomplete.

Defendants explained this to Plaintiff during the pre-motion conference. Plaintiff specifically responded that it understood the reason for the reference and was satisfied with the explanation. (Mosko Decl. ¶ 4) Thus, this portion of Plaintiff's motion is surprising and certainly unnecessary.

E. THIS COURT HAS ALREADY RULED AGAINST PLAINTIFF REGARDING THE RELEVANCY OF THE CONNECTU ACTIVITIES LISTED IN INTERROGATORY NOS. 11 AND 12

In the section beginning on page 13 of its brief, Plaintiff argues for an order compelling the production of information regarding near identical topics that this Court previously rejected as irrelevant. On January 6, 2006, this Court held a hearing on the extent of discovery to which Plaintiff was entitled regarding the issues related to personal jurisdiction over the individual defendants. Plaintiff argued it should be entitled to an unlimited inquiry, including liability and damages. This Court flatly rejected Plaintiff's argument, instead ruling that Plaintiff's inquiry must be "directly related" to whether this Court has personal jurisdiction over the individual defendants.

The January 6, 2006 hearing involved Plaintiff's Notice of Deposition in which it sought to conduct unlimited discovery. Plaintiff noticed ConnectU's deposition, seeking to ask questions on fourteen (14) different topics. This Court struck eleven (11) of those topics, after holding that discovery would be limited to issues "directly relevant" to personal jurisdiction, and that eleven of the requested topics were not relevant. (Mosko Decl. Exh. C) Surprisingly, despite having lost its argument, on page 5 of its brief Plaintiff re-visits the issues already decided against it.

Perhaps the most outrageous argument Plaintiff makes in this section of its brief concerns Interrogatory No. 12, which reads "IDENTIFY ALL USERS, including without limitation, their respective email addresses." CONFIRM QUOTE (In its definitions attached to the interrogatories, Plaintiff defines "Users" as ". . . PERSONS registered to use the services provided by CONNECTU, including without limitation, those provided at the connectu.com website").

Interrogatory No. 12 is nearly identical to deposition topic No. 14, which this Court struck as irrelevant to jurisdiction. Deposition topic 14 reads, "List(s) of individuals presently or formerly registered at connectu.com and their respective email addresses." (Mosko Decl. Exh A) Despite this sound rejection, Plaintiff moves for an order compelling Defendants to respond to an interrogatory that reads, "Identify all users including without limitation, their respective email addresses."

Indeed, in Defendant's Opposition to topic 14, it successfully argued to this Court as follows:

> In Topic 14, Plaintiff seeks the identity of ConnectU's registered users and their email addresses. In an obvious attempt to avoid this court's limiting order that allows discovery only on topics "directly relevant" to the personal jurisdiction of the individual defendants, Plaintiff seeks to depose ConnectU on what it claims Defendants took, i.e. email addresses. Preparing ConnectU to respond to this topic would be tremendously burdensome. Moreover, who its users are, and what their email addresses are cannot possibly be probative on the issue of whether this court has personal jurisdiction over the individual defendants. Plaintiff is using this opportunity to seek discovery on its ultimate case, even though this Court has limited all discovery to matters directly relevant to personal jurisdiction of the individual defendants. (Mosko Decl, Exh B).

Defendant's opposition put in issue each deposition topic. This Court made a specific finding that only topics 11, 12, and 13 could involve subjects that were "directly related" to personal jurisdiction issues. (Mosko Decl. Exh C). Nevertheless Plaintiff has put Defendants to the task of re-arguing the same issue on which Plaintiff has already lost. Plaintiff should be sanctioned for this tactic.

F. RESPONSES THAT REFERENCE CONNECTU'S PRODUCTION IN THE MASSACHUSETTS CASE WERE PROPER

In order to avoid duplication of production efforts, the parties earlier agreed that any document previously produced in the Massachusetts action would be deemed produced in this action. (Mosko Decl. ¶ 5) In the section beginning at page 14 of its brief, Plaintiff cites sixteen (16) responses by Defendants that referred to ConnectU's document production in the Massachusetts case. Plaintiff here ignores the above-referenced agreement, and seeks an Order compelling Defendants to tell Plaintiff where to find certain documents in the Massachusetts case production. Plaintiff cites the Rutter Group publication, page 8H-6, as the only authority for requiring ConnectU to rummage through its production. However, page 8H-6 of the Rutter Group's publication concerns electronic data stored on computers. It does not come close to supporting Plaintiff's contentions.

The closest authority on this issue runs against Plaintiff's argument. *See, e.g.* Cal. Civ. Proc. Code § 2030.220(c), which provides that the duty to make reasonable efforts to obtain requested information does not apply to "information equally available to the propounding party." Cal. Civ. Proc. Code § 2030.220(c).

That said, in order to resolve the issue presented at page 14 of Plaintiff's moving papers, ConnectU has reviewed its prior production and provides the following information to assist Plaintiff:

Regarding RFP No. 1: No previous contracts were produced in the Massachusetts litigation because none exist.

Regarding RFP No. 2 and 9: No previous communications between defendants and California entities or persons were produced in the Massachusetts litigation. They were, however, produced in Defendants' recent production prior to the January 16, 2006 depositions.

Regarding RFP No. 3: No previous communications between Defendants and Plaintiff were produced in the Massachusetts litigation because none exist.

Regarding RFP No. 6, 7, 18, 19, and 22: The organizational documents of ConnectU were produced in the Massachusetts litigation. The production numbers are C004562 - 4567, C009718, C0011285 - 11335.

Regarding RFP No. 10, 17 and 23: This Court has ruled that the only discovery appropriate at this stage must be "directly related" to whether the Court can exercise personal jurisdiction over the individual defendants. (Mosko Decl. Exh. C) This Court has already ruled that general information regarding ConnectU's activities cannot be relevant. (*Compare* Mosko Decl. Exh. A to Exh. C) The number of users who have registered with ConnectU is not directly relevant to jurisdictional issues. ConnectU's services are equally irrelevant. In any event, no such documents were produced in the Massachusetts litigation.

Regarding RFP No. 11: No previous documents concerning ConnectU's accounts receivable were produced in the Massachusetts litigation because ConnectU has never had such accounts as a result of Plaintiff having stolen the concept.

Regarding RFP No. 14: The production numbers of the screenshots previously produced in the Massachusetts case are C002594-96, C007874.

Regarding RFP No. 15: No previous email "solicitation" communications sent to members of Facebook were produced in the Massachusetts litigation because they do not exist.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's motion should be denied.

Dated: February 3, 2006

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

By: /s/ Scott R. Mosko

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